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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/601,078

06/20/2003

Kenneth Roger Jones

1033-SS00380

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84326 7590 05/12/2009
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ATTN: PATENT DOCKETING
ROOM 2A-207
ONE AT & T WAY
BEDMINISTER, NJ 07921

EXAMINER

SOL, ANTHONY M

ART UNIT

PAPER NUMBER

2419

MAIL DATE

DELIVERY MODE

05/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/601,078	Applicant(s) JONES ET AL.	
	Examiner Anthony Sol	Art Unit 2419	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,6-9,11-16 and 19-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-9,11-16 and 19-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

- A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/3/2009 has been entered.
- Claims 1, 2, 8, 9, 12, 14, and 16 have been amended.
- Claims 3-5, 10, 17, and 18 have been canceled.
- Claims 20-25 have been added.
- Claims 1, 2, 6-9, 11-16, and 19-25 are pending.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1, 2, 6-9, 11-16, and 19-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claims 1, 9, and 16,

Claim 1, and similarly claims 9 and 16, recites in part:

“inquiring, from a remote location, a status of an upper-layer communication indicator, the upper-layer communication indicator displayed at a transceiver, wherein the status is observable by a visual inspection of the upper-layer communication indicator by an end-user, and wherein the status of the upper-layer communication **indicator indicates an Open Systems Interconnection (OSI) layer 4** or above communication status;
...
performing a first set of actions when the status indicates **valid** upper-layer communication; and
performing a second set of actions when the status indicates **invalid** upper-layer communication.” (emphasis added)

The specification does not provide any description of the above emphasized limitations. The specification provides an enabling disclosure for only a layer 3 indicator, specifically a PPPoE indicator. The applicant has amended the claims to particularly recite a layer 4 indicator or above, arguing that Armstrong’s PPPoE indicator is an OSI layer 3 indicator, and not an OSI layer 4 or above indicator (see Remarks, pg. 7, 4th full paragraph). The only mention of OSI layer 4 or above is in reference to figure 2; however, the description is only describing a well-known International Standards

Organization (ISO) standard's model, consisting of seven layers (see Specification, para. [1019]). The specification broadly describes an "upper-layer indicator" in reference to fig. 4. Again, however, there is no mention of a layer 4 or above indicator, only a layer 3 indicator, specifically a PPPoE indicator (see Specification, para. [1036]). And since the applicant has amended the claims to recite a "layer 4 or above" indicator to particularly distinguish from the prior art cited by the examiner (i.e., Armstrong, US 2003/0231206, in the Office action mailed 12/3/2008), an enabling disclosure describing a "layer 4 or above" indicator is clearly necessary as required by 35 U.S.C. 112, first paragraph.

Allowable Subject Matter

3. Claims 1, 2, 6-9, 11-16, and 19-25 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, first paragraph, set forth in this Office action.

Response to Arguments

4. Applicant's arguments with respect to claims 1, 2, 6-9, 11-16, and 19-25 have been considered but are moot in view of the new ground(s) of rejection.

- However, see the detailed 112 first paragraph rejection above which contains examiner comments relating to applicant's arguments in regards to the newly added limitations to the independent claims in part reciting a layer 4 or above indicator.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Dombkowski (US 2002/0106017 A1) discloses a transport layer error indicator bit.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Sol whose telephone number is (571)272-5949. The examiner can normally be reached on M-F 7:30am - 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on (571) 272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2419

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/A. S./
Examiner, Art Unit 2419

/Jayanti K. Patel/
Supervisory Patent Examiner, Art Unit 2419